

1                   Abby Harbour  
2                   abby.ku07@yahoo.com  
3                   15527 East Palatial Drive  
4                   Fountain Hills, Arizona 85268  
5                   480-717-1984  
Claimant  
*In Propria Persona*

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DEC 27 2023

CLERK U S DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,

Case No. 2:19-cr-00898-DLR

**Plaintiff,**

11 VS.

## **ABBY HARBOUR'S AMENDED VERIFIED CLAIM**

David Allen Harbour,

**Defendant.**

I am Abby Harbour. I have been married to the Defendant since 2010. We have no prenuptial agreement in place. I have reviewed the Preliminary Order of Forfeiture, Doc. 801, filed 11-6-2023, and also the Plaintiff's Motion to Amend the Order of Forfeiture, Doc. 805, dated 11-27-2023 (collectively, "Forfeiture Contentions")

20 I claim all the items listed in the two documents. Three bases exist for my claims:  
21 1) The items listed below with asterisks (\*) were gifts to me by my husband and, as such,  
22 are my sole and separate property and are not subject to forfeiture, 2) alternatively, they,  
23 along with the items not marked with an asterisk (\*) are community property under  
24 Arizona law and, as such, are not forfeitable. The coins were gifts to my children from  
25 my parents (the Gottschalks') and are exempt from forfeiture (10 Silver Dollars in  
26

American Eagle Collector Boxes) under, *inter alia*, the Uniform Gift to Minors Act and by the fact that they belong to my children.

## Claimed Items

- 5 1. 18 Karat White Gold Diamond Cuff Bracelet (Tr. Ex. 887)\*  
6 2. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendant  
7 and Cable Chain (Tr. Ex. 888)\*  
8 3. Scott Kay Engraved Platinum Classic Band Stamped (Tr. Ex. 889)\*  
9 4. Hamra Jewelers Engraved Custom Platinum Diamond Ring (Tr. Ex. 890)\*  
10 5. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial  
11 Number A384EAP (Tr. Ex. 891)  
12 6. Engraved Custom Platinum Eternity Band (Tr. Ex. 892)\*  
13 7. Rolex Day-Date Pearlmaster Watch with Serial Number  
G527156 and Masterpiece Bracelet (Tr. Ex. 893)\*  
14 8. \$3,000 Cash  
15 9. Paradise Valley Country Club Equity in the amount of  
\$12,437.42  
16 10. Whisper Rock Golf Club Membership in the amount of \$52,819.77.  
17 11. Cartier Pasha Seatimer Chronograph Watch with Serial Number 604011MX  
and Black Rubber Bracelet;  
18 12. 18 Karat White Gold Diamond Cuff Bracelet (may be repeat);\*  
19 13. Stud Earrings;\*  
20 14. Three ASU Championship Rings  
21 15. Chanel Watch with Serial Number W.K.80418;\*  
22 16. Ring with Pink Stone;\*  
23 17. Stainless Navitimer Gents Breitling Watch with Serial Number 422425  
24 18. Polished Navitimer Heritage Bracelet.\*

## Justification

Federal laws governing criminal forfeiture do not contemplate seizure of an innocent spouse property to satisfy the offending spouse forfeiture obligation. *U.S. v Chavez* 323 F.3d 1216 (9<sup>th</sup> Cir.2003); *U.S. v Lester* 85 F.3d 1409 (9<sup>th</sup> Cir. 1996) the property of an innocent spouse cannot be forfeited. (Arizona case); *see also; U.S. v Wolfe* 375 Supp 3d 428 (S.D.N.Y. 2019). In *Wolfe*, which involved an innocent spouse seeking avoidance of forfeiture, the Court noted that the government cannot use property of an innocent spouse as substitute property. There, the Defendant and his wife lived in New York and had property in North Carolina and Arizona. Under the community property laws of Arizona the government was not allowed to use substitute property in which the wife held an interest.

14 Here, the jewelry was proved to have all been purchased with money from Canyon  
15 Road (\$6.6 million). The FTC Receiver Larry Cook testified that Harbour was not  
16 accused of any wrong doing or fraud with respect to Canyon Road. The FTC did not  
17 believe they had probable cause to charge David with any fraud. Even if the money came  
18 from KSQ, Agent Green testified when he audited Harbour he did not connect any money  
19 KSQ sent to Harbour to lenders money. Agent Green testified he could not trace any  
20 money KSQ sent Harbour to the 25% Finder's Fee Agreement. Agent Paige testified she  
21 could not trace any money KSQ sent Harbour to the 25% Finder's Fee Agreement.  
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Case law from the 9<sup>th</sup> Circuit and the Supreme Court has ruled it is not mail or wire fraud if the “kick-backs” or commissions did not come from the victims money. see *U.S. v Lew* 875 F.2d 219 (9<sup>th</sup> Circuit 1989) and *McNally v U.S.* 483 US 350 (U.S. 1987).

1 The evidence from the trial record was that no money came from the lenders. It came  
2 from KSQ and Agent Paige testified she did not know where the money came from the  
3 KSQ used to pay Harbour.  
4

5 Finally, AUSA Rapp admitted no money was traced to any lender or victim's  
6 money to purchase and assets. (Hr, 7/26/23, pg.77)

7 RESPECTFULLY SUBMITTED this \_\_\_\_ day of December 2023.

8 I, Abby Harbour, am of lawful age and I make this verified claim under penalty of  
9 perjury.

10 By: \_\_\_\_\_  
11 Abby Harbour

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on December \_\_\_\_, 2023,  
14 I mailed the attached document to:

15 Joseph Bozdech  
Joseph.bozdech@usdoj.com  
16 Assistant United States Attorney  
Two Renaissance Square  
17 40 N. Central Avenue, Suite 1800  
Phoenix, AZ 85004-4408  
18 Attorney for Plaintiff

19 Kevin M. Rapp  
Kevin.rapp@usdoj.gov  
20 U.S. Attorney's Office  
Two Renaissance Square  
21 40 N. Central Avenue, Suite 1800  
Phoenix, AZ 85004-4408  
22 Attorney for Plaintiff

23 Stephen M. Dichter  
sdichter@cdslawfirm.com  
24 Christian Dichter & Sluga, P.C.  
25 2800 North Central Avenue, Suite 860  
Phoenix, AZ 85004  
26 Attorney for Defendant

27 \_\_\_\_\_  
28 \_\_\_\_\_

1 Abby Harbour  
2 Claimant  
3 *In propria persona* \_\_\_\_\_  
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US 350 (U.S. 1987). The evidence from the trial record was that no money came from the

lenders. It 1 came from KSQ and Agent Paige testified she did not know where the  
money 2 came from the KSQ used to pay Harbour.  
3

Finally, AUSA Rapp admitted no money was traced to any lender or  
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15 Joseph.bozdech@usdoj.com  
Assistant 16 United States Attorney  
Two 17 Renaissance Square  
40 N. 18 Central Avenue, Suite 1800  
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Attorney for Plaintiff

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25 sdichter@cdslawfirm.com  
Christian 26 Dichter & Sluga, P.C.  
27

2800 North Central Avenue, Suite 860  
Phoenix, AZ 85004  
Attorney for Defendant

1                     Abby  
2                     Claimant  
3                     *In propria*

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2                     Harbour

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